IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

W.P.NO.1214 OF 2006

Girishkumar Chimanlal Sheth ..Petitioner

Vs.

The New India Assurance Co.Ltd.
and Anr. ..Respondents

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Mr.R.G.Khimkhabwala withMr.M.A.Shah
Advocate for Petitioner
Mr.S.S.Vidhyarthi i/b S.M.Vidhyarthi for
Respondents

...

CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : JULY 7, 2006

P.C.

1. Heard learned advocates for the parties.

2. It is the grievance of the petitioner that the policy which he had taken from Respondent No.2 governed his son who was driving the vehicle. In an unfortunate accident, the vehicle which was insured, met with an accident wherein the son of the petitioner expired. The claim of the petitioner was repudiated by the Corporation. Aggrieved, the petitioner approached Ombudsman in terms of Rules framed under Section 14 of the Insurance Act. The

Ombudsman after having gone through the complaint, was pleased to reject the case of the petitioner herein. Hence, the present petition.

3. The Rules of procedure of Ombudsman are very clear. All that Ombudsman can do, is to make recommendations and if parties accept the recommendations, then to pass an Award. In the instant case, Ombudsman refused to accept the claim of the petitioner, in another words, the Ombudsman who otherwise acts as a mediator, in the instant case, did not propose any terms of settlement.

4. On behalf of petitioner, the learned counsel contends that the terms of the contract involve a public law element in which the public at large are interested and for that purpose, relies on the judgment of the Apex Court in the case of **L.I.C. Vs. Consumer Education & Research Centre and Another reported in 1995(5) SCC 482.** In that case, L.I.C. had refused to insure a class of persons. In that context, the Apex Court observed that L.I.C. which is a public body, could not have excluded the class of persons by not giving them the cover of insurance. In the instant case, what we are concerned with, is

the policy which was issued in favour of petitioner and which the petitioner claims is not being enforced. The Apex Court in such cases, has clearly taken a view that no writ petition would be maintainable and it will be open to the party to take recourse to alternate remedy available under law for breach of contract. Gainfully reference can be made to the decisions in the case of **L.I.C. Vs. Asha Goel and another** reported in **2000 ACJ 806** as also judgment in the case of **L.I.C. Vs. Kiran Sinha** reported in **1985 ACJ 657.**

5. Considering the above, we are clearly of the opinion that this is not a fit case for this Court to exercise its extra ordinary jurisdiction. However, it will be open to the petitioner to approach the forum to which he may be entitled to. We have not decided the merits of the matter.

6. With the above observation, petition is disposed of. However, in the facts and circumstances of this case, there will be no order as to costs.

[F.I.REBELLO, J.]

[SMT.V.K.TAHILRAMANI,J.]